

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DAVID F. BUTLER and COLLEEN A.	:	
BUTLER, POWER PLAYERS	:	
INTERNATIONAL, INC.,	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 3:04 CV 1085(CFD)
	:	
FREELIFE INTERNATIONAL, LLC	:	
Defendant.	:	

RULING ON MOTION TO DISMISS

Plaintiffs David and Colleen Butler and the unincorporated plaintiff Power Players International, Inc. (which is wholly owned by the Butlers), originally brought this action against defendant FreeLife International, LLC ("FreeLife") in the United States District Court for the Central District of California. FreeLife filed a motion to dismiss for lack of personal or subject matter jurisdiction, or, in the alternative, to transfer the action to Connecticut. That court granted the motion to transfer, and the case was transferred to the District of Connecticut.¹ Now pending is FreeLife's renewed motion to dismiss for lack of subject matter jurisdiction.² For the following reasons, the motion, construed as a motion to stay litigation and compel arbitration, is granted.

¹While the action was pending in California, the Butlers filed for Chapter 7 bankruptcy protection in the Bankruptcy Court for the District of Utah. Consequently, this claim became part of the Butlers' bankruptcy estate. On June 6, 2005, however, the bankruptcy court approved the sale of the bankruptcy estate's interest in this litigation back to David and Colleen Butler.

²FreeLife no longer asserts a personal jurisdiction challenge.

I Background

The plaintiffs' first amended complaint alleges the following. FreeLife promotes a lineup of dietary supplements through a multilevel marketing distribution system, otherwise known as a pyramid sales structure. The Butlers began to sell FreeLife products through the "sponsorship" of Keith McEachern, a founder and "master distributor" of FreeLife products. The Butlers were successful in developing their own FreeLife distributorship, and soon had other distributors working below them. Due to their success, the Butlers received awards and recognition from the national FreeLife structure, including having their picture placed on the cover of the "FreeLife Times" magazine on several occasions.

Their success also allowed them to gain new titles within the FreeLife structure, progressing from "Senior Directors" to "Corporate Directors" to "Ambassador Directors" to "Ambassador Directors II" in November 1997. The Butlers were the first distributors to receive the "Ambassador II" title. In addition, the Butlers served on FreeLife's Executive Leadership Council and President's Leadership Council, and they were chosen Distributors of the Year in 1996. The Butlers allege that, despite their success and the revenue they were generating for FreeLife, they were terminated without justification and had their commission checks wrongfully withheld by FreeLife.

The amended complaint sets forth claims for: (1) securities fraud (operation of a pyramid scheme) in violation of Section 12(2) of the Securities Act of 1933 and Section 10 of the Securities Act of 1934; (2) mail, wire and securities fraud giving rise to civil liability under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961(1)(B) and (1)(D); and state law claims for (3) breach of contract, (4) wrongful termination of, and interference with, business expectancies and contractual relationships; (5) defamation of

character; (6) intentional infliction of emotional distress; and (7) products liability.³

FreeLife's motion to dismiss argues that this Court lacks subject matter jurisdiction because: (1) the parties agreed to arbitrate all claims; and (2) the Supreme Court decision in Juidice v. Vail, 430 U.S. 327 (1977) and the Anti-Injunction Act, 28 U.S.C. § 2283, preclude the type of relief sought by the plaintiffs.

II Relief Requested by the Motion

The motion to dismiss appears to request dismissal of this action pursuant to Fed. R. Civ. P. 12(b)(1) due to the arbitration clauses found in the parties' contracts. "The Second Circuit has made it clear, however, that in order to further the 'liberal federal policy favoring arbitration agreements,' a district court should ordinarily grant a stay when it decides that a dispute must be arbitrated, rather than dismissing the action and thereby triggering appeal rights and the delay attendant to such appeals." Patrowicz v. Transamerica HomeFirst, Inc., 359 F. Supp.2d 140, 160 (D.Conn. 2005) (quoting Salim Oleochemicals v. M/V Shropshire, 278 F.3d 90, 93 (2d Cir. 2002) and Ermenegildo Zegna Corp. v. Zegna, 133 F.3d 177, 180 (2d Cir. 1998)). Consequently, the Court construes FreeLife's motion as a motion to stay pending arbitration.⁴

³ Although the amended complaint also contained claims for deprivation of civil rights pursuant to 42 U.S.C. § 1983 and securities fraud pursuant to California state law, those claims have been withdrawn by the plaintiffs.

⁴The Court notes that it has the inherent authority to order the parties to arbitrate their claims. See, e.g., Landis v. North Am. Co., 299 U.S. 248, 254-255 (1936) ("The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants"); Nederlandse Erts-Tankersmaatschappij, N.V. v. Isbrandtsen Co., 339 F.2d 440 (2d Cir. 1964) ("a stay may . . . be appropriate where the pending proceeding is an arbitration in which issues involved in the case may be determined"); see also Contracting Northwest, Inc. v. City of Fredericksburg, 713 F.2d 382 (8th Cir. 1983); ATSA of California, Inc. v. Continental Ins. Co., 702 F.2d 172, (9th Cir. 1983), amended on other grounds 754 F.2d 1394; Gavlik Const. Co. v. H. F. Campbell Co., 526 F.2d 777 (3d Cir. 1975).

III Discussion

The plaintiffs attached several documents to their amended complaint, including copies of the various contracts entered into by the parties. In its motion to dismiss, FreeLife notes that those contracts contain agreements to arbitrate all claims.⁵

The Independent Marketing Executive Application and Agreement entered into by the Butlers and FreeLife contains the following provision:

This Independent Executive Marketing Application and Agreement is governed under the laws of the State of Connecticut. The parties agree that any claim, dispute or other difference between them shall be exclusively resolved by binding arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association with arbitration to occur at New Haven County, Connecticut.

The "Policies and Procedures" of FreeLife that were in effect at the time the Butlers' distributorships were terminated contained the following provision:

[D]isputes and claims relating to FreeLife, the Agreement, or FreeLife's products and services, the rights and obligations of an Independent Marketing Executive and FreeLife, or any other claims or causes of action relating to the performance of either an independent Marketing Executive or FreeLife under the Agreement shall be settled totally and finally by arbitration in Milford, Connecticut, or such other location as FreeLife prescribes, in accordance with the Federal Arbitration Act and the Commercial Arbitration Rules of the American Arbitration Association which are in effect at the time the arbitration is filed. . . . This agreement to arbitrate shall survive the cancellation of the Agreement.

Finally, the "Executive Leadership Council Agreement of David and Colleen Butler" and the "President's Leadership Council Agreement of David and Colleen Butler" contain the following identical provisions:

This Agreement, and the rights and obligations of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Connecticut, except that the Federal Arbitration Act shall govern all matters

⁵The facts recited in this portion of the opinion are undisputed unless otherwise indicated.

related to arbitration. Any controversy or claim arising out of or in relation to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgement [sic] on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. All arbitration shall take place in New Haven, Connecticut. The decision of the arbitrator shall be final and binding on the parties and may, if necessary, be reduced to a judgement in any court of competent jurisdiction. This agreement to arbitrate shall survive the termination of this Agreement.

The Court agrees with FreeLife, and finds that the disputes raised in the action are subject to arbitration pursuant to the parties' contracts. The plaintiffs do not dispute that this language compels arbitration of their claims. However, the plaintiffs assert several arguments as to why this language should not be enforced.

First, the plaintiffs claim that when the District Court in California granted FreeLife's motion to transfer, "it necessarily denied the defendant's request to compel arbitration." This argument is without merit, as that Court specifically found that, because it had "determined that this action should be transferred to the District of Connecticut, [FreeLife's] motion to dismiss . . . [is] rendered moot, subject to renoticing in the District of Connecticut." *Butler v. Freelif, Intl.*, Civ. No. 03-1538 RT, slip op. at 6 (C.D.C.A. June 18, 2004).

Next, the plaintiffs claim that any agreement to arbitrate between the parties has been waived, abandoned and withdrawn by FreeLife. The following additional facts and procedural history are necessary for the resolution of the question of waiver and the related arguments. On October 21, 2002, after it had terminated the plaintiffs' distributorships, FreeLife filed a law suit against the Butlers with a request for a temporary injunction and order to show cause in the Connecticut Superior Court, asking the court to restrain the Butlers from, *inter alia*, "committing *further* violations of their respective agreements with FreeLife . . . interfering with FreeLife's contractual relations . . . interfering with FreeLife's prospective business and/or economic

interests and business advantages . . . [and] from misappropriating and/or misusing of FreeLife's confidential and proprietary documentation and trade secrets" (Emphasis added). On December 2, 2002, the Superior Court issued a temporary restraining order based on the parties' agreement. Soon thereafter, however, FreeLife filed a motion for contempt, claiming that the Butlers had continued to engage in conduct that was prohibited by the temporary restraining order. On December 16, 2002, the Superior Court held a contested contempt hearing, and subsequently found that the Butlers had violated the terms of the temporary restraining order sixty-one times. Consequently, the Court fined the Butlers \$152,500.

On December 31, 2002, FreeLife filed a second motion for contempt, claiming that the Butlers continued to engage in prohibited conducted despite the temporary restraining order and the prior order of contempt. After noting that it was "literally amazed at the conduct of the [Butlers], particularly in light of the court's prior ruling," the court found the Butlers in contempt for two hundred and ninety-six violations of the temporary restraining order, and fined them \$765,000. Although FreeLife has since filed a third motion for contempt, the Superior Court proceeding has been stayed due to the Butlers' bankruptcy.

During the time that the Superior Court matter was proceeding, FreeLife also submitted a related claim against the Butlers for arbitration.⁶ After the Superior Court had awarded it the injunctive relief previously described, as well as the significant contempt fines against the Butlers, however, FreeLife's counsel sent a letter to the American Arbitration Association stating: "Let this letter serve as Formal Notice that the Plaintiff in the above matter, FreeLife International, LLC, hereby withdraws the above Arbitration Matter. This Withdrawal is

⁶It appears that the principal difference between the two proceedings was that the Superior Court proceeding sought equitable relief in the form of an injunction to prohibit future violations, while the arbitration proceeding sought damages.

conditioned upon [FreeLife] obtaining the desired result of thereby withdrawing the entire matter from your docket."

The withdrawal of that matter from arbitration, and the letter from FreeLife's attorney effecting such a withdrawal, did not constitute an abandonment or waiver of FreeLife's ability to force arbitration of claims for damages brought by the Butlers. Instead, the Court credits the representations from FreeLife's attorney at oral argument that FreeLife withdrew its arbitration because it already had received the desired financial result in the Superior Court, the Butlers had refused to appear at the arbitration proceedings, and it was likely that FreeLife would be solely responsible for payment of the future costs of arbitration. Finally, the agreements themselves provided for court-ordered injunctions in aid of arbitration. Because of the results achieved in the Superior Court, there was no need for FreeLife to proceed with arbitration on the issues involved in those actions. In this action, the claims are brought by the Butlers against FreeLife, and the claims are broader than the claim already litigated in the Superior Court, i.e. enforcement of contractual terms concerning activities by the parties *after* the Butlers were terminated. Moreover, FreeLife was within its rights to bring an action in the Superior Court for equitable relief in aid of arbitration, as the Independent Marketing Executive Application and Agreement provides, in relevant part:

Nothing in the Agreement shall prevent FreeLife from applying to and obtaining from any court having jurisdiction a writ of attachment, a temporary restraining order, preliminary injunction, permanent injunction or other relief available to safeguard and protect FreeLife's interest prior to, during or following the filing of any arbitration or other proceeding or pending the rendition of a decision or award in connection with any arbitration or other proceeding.

Consequently, the Court finds that FreeLife has not waived or abandoned its right to have

the plaintiffs' claims resolved through arbitration.⁷

IV Conclusion

The motion to dismiss [**Doc. # 64**], construed as a motion to stay litigation and compel arbitration, is **GRANTED**. The parties are hereby ordered to submit the plaintiffs' claims to arbitration pursuant to the relevant contractual provisions.

SO ORDERED this 28th day of March 2006, at Hartford, Connecticut.

/s/ CFD
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE

⁷At oral argument on FreeLife's motion to dismiss, plaintiffs' counsel briefly argued that the arbitration clauses contained in the parties' contracts should not be enforced because they were contracts of adhesion, there was no meeting of the minds and there was no consideration. Because the plaintiffs have not properly presented these arguments, and have not presented any evidence or analysis in support of these arguments, the Court need not address them at this time. Also, because of the resolution of the Motion to Dismiss in this opinion, the Court does not reach the defendant's other arguments.